AUG 16 1996

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	RM 8535
	)	

DOCKET FILE COPY ORIGINAL

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel, file their comments to the Further Notice of Proposed Rulemaking released in this proceeding on July 2, 1996.[1]

INTRODUCTION

The Telecommunications Act of 1996[2] requires the Commission to determine a competitively neutral basis by which the cost of establishing number portability shall be borne by all telecommunications carriers.[3] The 1996 Act is silent as to method of recovery for the costs that are to be borne by all carriers.[4] In its Further Notice the Commission seeks comments on the appropriate cost recovery mechanisms for "long-term" number portability ("LNP").[5]

[1]*In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (July 2, 1996)("Further Notice").

[2]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. § 151 *et seq.* ("1996 Act").

[3]47 U.S.C. § 251(e)(2)(emphasis added).

[4]Further Notice, ¶ 209 (tentatively concluding that § 251(e)(2) does not address recovery of those costs from consumers, but only the allocation of such costs among carriers).

No. of Copies rec'd 0+11
List ABCDE

BellSouth believes that any LNP cost recovery mechanism must take into account the 1996 Act's mandate that the entire range of LNP costs will be equitably distributed among each carrier participating in the North American Numbering Plan ("NANP"). Specifically, the cost recovery mechanism must not operate in a manner that counteracts the competitively neutral allocation of total LNP costs. Thus, just as Congress has determined that LNP costs may not be allocated to local exchange carriers ("LECs") alone, the LNP cost recovery mechanism must not impose a greater burden on one group of firms relative to other firms in a competitive market. Further, any LNP cost recovery system must be consistent in its application with competitively neutral cost allocation by providing neither an incentive or disincentive for consumers to change service providers.

I. THE COMMISSION'S COST RECOVERY PRINCIPLES FOR CURRENTLY AVAILABLE NUMBER PORTABILITY ARE INAPPLICABLE TO LONG TERM NUMBER PORTABILITY.

The Commission seeks comment on its tentative conclusion that any LNP cost recovery mechanism must comply with the principles set forth by the Commission when it "determin[ed] the cost recovery mechanism for currently available number portability measures."[6] These principles are inapplicable to LNP.[7] These "principles" were developed for service offerings that, by the Commission's own admission, have substantially different costs than LNP.

---

[5] *Id at* ¶¶ 209-230. The 1996 Act does not use the term "long term" to modify the term "number portability."

[6] *Id* at ¶ 210.

[7] The Commission never explains why "competitively neutral" and "cost causation" are mutually exclusive terms.

The Commission adopted its "currently available" principles, in part, to create incentives for LECs to implement LNP, even though the Commission has mandated implementation of LNP in a matter of months. Obviously, the need for any such incentive no longer exists. Moreover, in light of the fact that incumbent LECs will initially incur the substantial share of costs for LNP, it is inconceivable that the Commission's endorsement of a mechanism in which "each carrier bears its own costs" would comply with the 1996 Act's requirements that the costs of LNP be borne by all carriers based on a competitively neutral cost allocation standard. Thus, the Commission's "currently available number portability" cost recovery principles if applied to LNP, would neutralize (i.e., handicap) one group of carriers, LECs, as competitors rather than ensuring that the costs of LNP are "borne by all telecommunications carriers on a competitively neutral basis" as is expressly required under the Act.[8]

The first principle, that "a competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber" is problematic, especially since the Commission did not, in its Order, and does not now, in its Further Notice, attempt to define the terms "appreciable" or "incremental cost advantage." The "competing for a customer" test is irrelevant to Congress's directive that all telecommunications carriers (not just those competing for a specific subscriber) bear the costs of providing LNP. The second principle, that a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal rate of return, simply smacks of prototectionist, rate of return regulation. The Commission never answers what, in this era of competition, unbundled pricing and deregulation, a "normal" return is. Moreover, while any cost recovery method must ultimately pass constitutional

[8] 47 U.S.C. § 251(e).

muster, and not operate as a confiscation of property, there is no constitutional guarantee of a "normal return" to any business enterprise operating in a competitive market.

II. A COMPETITIVELY NEUTRAL COST ALLOCATION MECHANISM MUST TAKE INTO ACCOUNT ALL COSTS ASSOCIATED WITH LONG TERM NUMBER PORTABILITY AND DISTRIBUTE THESE COSTS EQUITABLY AMONGST ALL TELECOMMUNICATIONS CARRIERS.

The Commission correctly concludes that LNP "will require all carriers to incur costs associated with the installation of number portability-specific software and the construction of the number portability databases. Those costs will have to be apportioned in some fashion among all carriers."[9] In the state proceedings in which BellSouth has been involved, it has had the opportunity to participate in discussions concerning how the costs of LNP should be allocated in light of the 1996 Act. Based on that experience, BellSouth believes that principles of competitive neutrality should (1) ensure that the burden of all costs is broadly, fairly, and equitably distributed among all telecommunications service providers; (2) ensure that costs do not impose a greater burden on one group of firms relative to other firms in a competitive market; and (3) ensure that artificial, regulatory incentives or disincentives are not created with respect to end users changing service providers.

Competitively neutral LNP cost allocation and recovery mechanism needs to address all costs associated with LNP. Significantly, unlike interim number portability measures, these costs will be incurred by LECs regardless of whether or not consumers actually port their telephone numbers. The vast majority of costs required to implement LNP will be incurred by incumbent LECs. Meanwhile, wireline and wireless carriers participation in LNP is staggered, presenting the real possibility that costs will be incurred asymmetrically. A competitively neutral cost

---

[9] Further Notice, ¶ 122.

allocation system should recognize that the Commission chose not to require all carriers to participate in LNP at the same time, and should apportion costs equitably based on mandated participation dates and the extent of actual participation in LNP operations. Finally, customers should make the decision to change service providers based on market factors alone: quality, service, price and convenience. No cost recovery allocation or recovery mechanism should be inserted as an additional factor in this decision.

III. RECOVERABLE COSTS FOR LONG TERM NUMBER PORTABILITY INCLUDE BOTH SHARED COSTS AND ALL CARRIER-SPECIFIC COSTS THAT ARE DIRECTLY ATTRIBUTABLE TO LNP.

BellSouth generally agrees with the Commission's conclusions at ¶ 208 concerning the types of costs associated with LNP. In the Georgia Public Service Commission's number portability workshops BellSouth has identified costs in three general categories: Number Portability Administration Center or third party Service Management Systems ("NPAC/SMS"), database queries and infrastructure. These cost categories correspond with the Commission's categories as follows:

A. Costs of Shared Facilities (¶¶ 212-220)

The costs associated with the development, installation and administration of the NPAC/SMS database are incurred by the entire industry.[10] These costs include the start up costs of the system and the costs to maintain and to administer the NPAC/SMS after LNP is implemented, including database queries.[11] Also, the transaction costs for uploads to the

---

[10] *Id* at ¶ 212-220.

[11] The Commission needs to recognize the costs of database dips associated with completing calls for non-LNP capable networks which are not included in the initial sizing of the SCP. As the

NPAC/SMS and download broadcast messages are included in this category. These costs correspond with the Commission's shared carrier costs category.

B. Direct Carrier Specific Costs (¶¶ 221 - 225)

These are the labor and material costs that each individual carrier must incur to develop, implement and maintain LNP. It is critical that the Commission recognize and account for the entire LNP framework, not just LNP switch software, as it promulgates cost allocation and recovery regulations for LNP. The test for allocation or recoverability should be whether such expenditures would be incurred but for the deployment of LNP. Such carrier specific costs are just as important as the shared industry costs associated with the NPAC/SMS. If these costs are not incurred, then long term number portability will not work. The costs in this category include, but are not limited to: the costs for equipping end office switches with LNP software; adding switch processors; replacing the SS7 network links; adding and maintaining local SCPs necessary for LNP; adding capacity to STPs; modifications to legacy systems; lost time value of money associated with advancement of planned network modifications or additions due to LNP; development of mechanized interfaces; and, modifications to wireless roamer databases.

The Commission erroneously notes at ¶ 228 that "many LECs may already have the necessary network capabilities to support the provision of long term number portability, thus minimizing the need to incur upgrade costs." Implementing LNP is more than just loading LRN software. Both external and internal operations architectures must be considered. LEC external

---

Commission notes at ¶ 101, the provision of access to network elements for the purpose of provisioning LNP is addressed in the Commission's interconnection proceeding. However, the Commission has not ordered that all carriers are obligated to negotiate access to incumbent LEC databases for the purpose of LNP. In many instances, the LEC's network will be the network that needs to do the query for calls to numbers that have been ported. The LEC will then have to perform a query, and incur compensable costs, in order to complete the call.

LNP operations architecture must support communications to a neutral third party SMS and to each of the facility based service providers' operations management. An LNP gateway will serve as the single point of contact between the BST operations network, the NPAC/ SMS and the competing LECs' operations network. Internal LNP architecture must support provisioning and trouble administration related information flows between existing legacy Operational Systems (OS).[12] In order to conform to the performance criteria for LNP adopted by the Commission, existing systems that support billing, service order flow and maintenance of the network will require substantial additions and modifications in order to accommodate LNP. The Commission must recognize that implementing manual order flows for long term number portability may be viable for a few offices, but serious service degradation will occur if it is not mechanized.

IV. ANY COST RECOVERY MECHANISM NEEDS TO BE FLEXIBLE AND COMPORT WITH THE COMPETITIVELY NEUTRAL COST ALLOCATION MECHANISM.

Various carriers obviously view the allocation and recovery of costs incurred as a result of implementing LNP differently. Nevertheless, there are two constants which are independent of any individual carrier's viewpoints: (1) the requirement, in the 1996 Act, of competitive neutrality; and (2) the fact that all LNP costs are not to be borne by a limited class or number of carriers. 47 U.S.C. § 251 (e)(2). Costs of carrier network and legacy system modifications and operations incurred as a result of implementing LNP as well as the common costs of the NPAC/SMS should be allocated equitably among all telecommunications carriers. Once allocated, the recovery

[12]The LNP gateway is a new OS being developed by BellSouth in order to provide a centralized control and coordination role among the three LNP service order flows within the BellSouth operations network. This will require numerous internal interfaces to BellSouth legacy systems.

mechanism for these costs needs to be flexible so that it can adequately address different segments of LNP costs.

Regional industry pools should be used as the basis for a competitively neutral cost allocation and recovery mechanism for shared carrier costs associated with the installation and administration of the NPAC as well as for all direct carrier specific costs. Each regional pool should be administered by the local number portability administrator (LNPA) which will be designated by the North American Numbering Council ("NANC") and would remain in operation until all carriers have recovered their eligible costs.

Each carrier would be responsible for determining how (e.g. price adjustments, rate relief, etc.) to recover their share of LNP costs. BellSouth agrees with the Commission's conclusions that carriers subject to price cap regulation should be permitted to treat their share of LNP costs as an exogenous charge.

As stated above, both shared carrier costs associated with NPAC/SMS administration and maintenance and direct carrier specific costs should be allocated using a pool. Identification, allocation and recovery of the foregoing shared carrier costs present additional considerations. First, all carriers that receive downloads or broadcast messages from the NPAC/SMS should be required to pay for the downloads. The downloads should be priced at a transaction cost basis and should be shared by all carriers that receive downloads. The LNPA will determine what the transactions costs should be and will have the authority to modify these costs as needed. The LNPA should have the option of pricing these download transactions to include some costs for maintenance and upkeep of the system.

Second, the costs for the NPAC/SMS should be included in the upload transaction costs and the costs of upload transactions to the NPAC/SMS should be borne by the carrier who is porting the number. Depending on the design of the NPAC/SMS system, the upload transaction to the NPAC/SMS will consist of database transactions that will delete, modify and add information to the NPAC/SMS database. A portion of the upload transaction may be charged to the incumbent LEC, depending on how the transaction is structured, but the bulk of the transaction costs should be borne by the carrier who ports the number. An alternate method, also competitively neutral, would allocate the costs of the NPAC/SMS equally among all carriers who perform upload transactions regardless of the amount of telephone numbers that are ported.

Allocating the costs of the NPAC/SMS based on working NXXs or working main stations, is not, as some parties have suggested, competitively neutral. Such an approach would cause the majority of the costs for all portions of LNP to be borne by the incumbent LEC in direct contravention of the 1996 Act. Finally, any carrier customization work not specifically related to LNP should be borne by the service provider requesting the work, subject to approval by the LNPA.

CONCLUSION

The Commission should not graft its "currently available number portability" cost recovery principles onto long term number portability. The Commission should approve a regional pool as the preferred vehicle to facilitate the competitively neutral allocation of LNP costs among all carriers. Any LNP cost recovery mechanism must not operate to undermine the competitively neutral cost allocation process.

Respectfully submitted,

BELLSOUTH CORPORATION and
BELLSOUTH TELECOMMUNICATIONS, INC.

By: ______________________

M. Robert Sutherland
Richard M. Sbaratta
Theodore R. Kingsley

Their Attorneys

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-3386

DATE: August 16, 1996